Office-Supreme Court, U. S.
FILED
OCT 22 1951
CHARLES ELMORE CROPLEY

IN THE

Supreme Court of the United States

OCTOBER TERM, 1951.

No. 99

OBIE FAUSTER HUNTER, et al.,
Petitioners,

vs.

C. D. SHEPHERD, et al.,
Respondents.

PETITION OF OBIE FAUSTER HUNTER, et al. FOR REHEARING

RICHARD E. WESTBROOKS,
3000 South State Street,
Chicago, Illinois,
Counsel for Petitioners.

ELLIS & WESTBROOKS,
Chicago, Illinois,
Of Counsel.

CHAMPLIN-SHEALY COMPANY, CHICAGO 388

INDEX.

PAGE

Reasons for filing petition for rehearing..... 1

Questions intended to be presented..... 2

Argument:

I. Is this a government of law or a government of men?..... 6
Brief history of facts..... 8

II. The misconception or disregard of the facts and the law..... 12

Conclusion..... 15

Certificate of counsel..... 16

Appendix (Railway Labor Act, Sections 2, 3, 5 and 6)..I, II

CITATIONS.

Cases.

Hunter v. Atchison, Topeka and Santa Fe Railway Company, 171 F. 2d 594, 596, 597, 599..... 10

Hunter v. Atchison, Topeka and Santa Fe Railway Company, 188 F. 2d 294, 300..... 15

Joint Anti-Fascist Refugee Committee v. McGrath, 95 L. Ed. 817..... 12

Nord et al. v. Griffin, 7 Cir., 86 F. 2d 481.....10, 11

Spiller v. Atchison, Topeka and Santa Fe Railway Company, 253 U. S. 117, 40 S. Ct. 466, 468..... 7

United States Alkali Export Assn., Inc. v. United States, 325 U. S. 196, 204..... 7

United States v. United Mine Workers of America, 330 U. S. 258, 307..... 6

CONSTITUTION, STATUTES AND RULES.

Constitution of the United States, Fifth Amendment..11, 13

Railway Labor Act:
Section 2, First, (45 U. S. C. A. Sec. 152, First)..... 3
Section 3, First (j), (45 U. S. C. A. Sec. 153, First (j)) 2
Section 5, First (a) and (b), (45 U. S. C. A. Sec. 155, First (a) and (b))..... 3
Section 6, (45 U. S. C. A. Sec. 156)..... 4

Rules of the Supreme Court of the United States, Rule 33 8

Transportation Act, 1920:
Section 302..... 9

IN THE

Supreme Court of the United States

OCTOBER TERM, 1951.

No. 99

OBIE FAUSTER HUNTER, et al.,
Petitioners,

vs.

C. D. SHEPHERD, et al.,
Respondents.

PETITION OF OBIE FAUSTER HUNTER, et al. FOR REHEARING

To the Honorable Fred A. Vinson, Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

(Emphasis Ours Where Used In This Petition.)

Your petitioners, Obie Fauster Hunter and the forty other persons whose names are fully set forth in the petition for writ of certiorari (p. 1) and the Transcript of Record (pp. 4, 5) present this, their petition for rehearing.

Reasons for Filing Petition for Rehearing.

Sincerely believing that the vital questions of law intended to be presented to this Honorable Court for decision were so obscure as presented in the petition and reply

brief that their importance was overlooked by this Honorable Court, therefore, it is necessary to briefly state the same.

Questions Intended to Be Presented.

(1) Section 3, First (j) of the Railway Labor Act (45 U. S. C. A. 153 (j)) limits the giving of due notice *by the National Railroad Adjustment Board* of all hearings to the employee or employees involved in any dispute submitted and further provides for the parties who have been given due notice by the National Railroad Adjustment Board to be heard, either in person, by counsel, or by other representatives, as they may respectively elect; the petitioners were not given any notice by the National Railroad Adjustment Board and were involved in the dispute submitted to the Board which resulted in Award #6640, by which Award the petitioners suffered a substantial injury to their property rights, that is to say the execution of the Award meant the loss of their positions as train porter or porter-brakeman which they had held for more than forty consecutive years; not having received any notice from the National Railroad Adjustment Board they had no opportunity to appear and be heard as required by Section 3, First (j) of the Railway Labor Act. (Appendix I.)

(a) Did the Railroad Adjustment Board have jurisdiction to enter a valid order and Award where it is admitted that the National Railroad Adjustment Board failed to comply or attempt to comply with Section 3, First (j) of the Railway Labor Act?

(b) Did the Court of Appeals for the Seventh Circuit have jurisdiction to disregard the plain provisions in reference to the requirement, Section 3, First (j) of the Railway Labor Act, that the Board shall give due notice, and to

promulgate an entirely different method or mode of giving notice to employees involved in the dispute submitted to the Board?

(2) Title One, Section 2, First of the Railway Labor Act, (45 U. S. C. A. 152, First) requires all carriers and employees to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules, and working conditions and to settle all disputes whether arising out of the application of such agreements or *otherwise* in order to avoid any interruption to commerce or to the operation of any carrier growing out of any dispute between the carrier and the employees thereof; that no effort was made to comply with this provision of the said Railway Labor Act before the filing of the complaint with the National Railroad Adjustment Board. (Appendix I.)

(c) Did the failure of the carrier and the Brotherhood of Railroad Trainmen to comply or attempt to comply with this provision of the Railway Labor Act render the proceedings and Award void as against the petitioners to whom no notice was given and no opportunity to be heard was afforded?

(3) Section 5, First (a) and (b) of the Railway Labor Act (45 U. S. C. A. 155) confers *exclusive jurisdiction* on the Mediation Board where a dispute concerning changes in rates of pay, rules and working conditions not adjusted by the parties in conference and any other dispute not referable to the National Railroad Adjustment Board and not adjusted in conference between the parties or where conferences are refused.

(d) Is the Order and Award in the case at bar which was not made by the Mediation Board, as required by said Section 5, First, but by the National Railroad Adjustment Board, First Division, which had no jurisdiction in dis-

putes concerning changes in rates of pay, rules, or working conditions void as to these petitioners to whom no notice was given and no opportunity to be heard was afforded?

(4) Section 6, of the Railway Labor Act (45 U. S. C. A. 156) requires the carrier and representatives of the employees to give at least thirty days written notice of an intended change in agreements affecting rates of pay, rules, or working conditions, and the time and place for the beginning of conference between the representatives of the interested in such intended changes shall be agreed upon within ten days after the receipt of the said notice, and the said time shall be within thirty days provided in the notice; in the case at bar the said Section was not complied with as to notice to the petitioners and no attempt was made by the carrier or Brotherhood of Railroad Trainmen to comply with said Section. (Appendix II.)

(e) Is the Order and Award, entered in this suit and which is the basis of these proceedings void as to the petitioners to whom no notice was given and no opportunity to be heard was afforded, because of the failure of compliance or attempted compliance by the carrier and the Brotherhood of Railroad Trainmen?

The record shows that the National Railroad Adjustment Board arbitrarily and capriciously by its Order and Award #6640, which was entered without notice and an opportunity to be heard having been given to the petitioners and by which the petitioners or some of them have suffered the loss of their property rights in violation of the Fifth Amendment of the Constitution of the United States. The admissions by the pleadings and the decision of the District Court of the United States and the Court of Appeals of the Seventh Circuit also found the Order and Award void as to the petitioners. The Award having been admittedly void and having been found void by two courts.

(f) Are these not particular circumstances to warrant this Honorable Court to grant its writ of certiorari, without further protracting the litigation to the extent that would be necessary in order to again and for the third time find the Order and Award void?

ARGUMENT.

Is this a government of laws or a government of men?

We believe this question to have been fully answered in the concurring opinion of Mr. Justice Frankfurter in *United States* v. *United Mine Workers of America,* 330 U. S. 258, 307, where it is said:

> "The historic phrase 'a government of laws and not of men' epitomizes the distinguishing character of our political society. When John Adams put that phrase into the Massachusetts Declaration of Rights he was not indulging in a rhetorical flourish. He was expressing the aim of those who, with him, framed the Declaration of Independence and founded the Republic. 'A government of laws and not of men' was the rejection in positive terms of rule by fiat, whether by the fiat of governmental or private power. Every act of government may be challenged by an appeal to law, as finally pronounced by this Court. Even this Court has the last say only for a time. Being composed of fallible men, it may err. But revision of its errors must be by orderly process of law. The Court may be asked to reconsider its decisions, and this has been done successfully again and again throughout our history. Or, what this Court has deemed its duty to decide may be changed by legislation, as it often has been, and, on occasion, by constitutional amendment.
>
> But from their own experience and their deep reading in history, the Founders knew that Law alone saves a society from being rent by internecine strife or ruled by mere brute power however disguised. 'Civilization involves subjection of force to reason, and the agency of this subjection is law.' The conception of a government by laws dominated the thoughts of those who founded this Nation and designed its Constitution, although they knew as well as the belittlers of the conception that laws have to be made, interpreted and enforced by men. To that end, they set apart a body

of men, who were to be the depositories of law, who by their disciplined training and character and by withdrawal from the usual temptations of private interest may reasonably be expected to be 'as free, impartial, and independent as the lot of humanity will admit.' So strongly were the framers of the Constitution bent on securing a reign of law that they endowed the judicial office with extraordinary safeguards and prestige. No one, no matter how exalted his public office or how righteous his private motive, can be judge in his own case. That is what courts are for. And no type of controversy is more peculiarly fit for judicial determination than a controversy that calls into question the power of a court to decide. Controversies over 'jurisdiction' are apt to raise difficult technical problems. They usually involve judicial presuppositions, textual doubts, confused legislative history, and like factors hardly fit for final determination by the self-interest of a party."

The basic fundamental principles of American democracy as expressed in the above quotation, gives to the petitioners hope that this Honorable Court will consider among other matters disclosed by the record, the hardship imposed upon the petitioners by a long postponed appellate review, coupled with the attendant infringement of the asserted Congressional policy of the conferring primary jurisdiction on the National Railroad Adjustment Board, together will support the appeal to the discretion of this court to exercise its power to review the rulings of the Court of Appeals and will not deny present relief to the petitioners by a denial of their petition for writ of certiorari. *United States Alkali Export Assn., Inc.* v. *United States,* 325 U. S. 196, 204; *Spiller* v. *Atchison, Topeka and Santa Fe Railway Company,* 253 U. S. 117, 40 S. Ct. 466, 468.

Brief History of Facts.

Craving the indulgence of this Honorable Court, we briefly state certain pertinent facts which were not previously considered. Revised Rules of the Supreme Court of the United States, Rule 33.

In March, 1899, the Atchison, Topeka and Santa Fe Railway Company, a common carrier by rail, hereinafter called the Santa Fe, created a craft of employees known as train porters or porter-brakemen, composed entirely of American citizens of color and hereinafter referred to as petitioners (T. R. 13). The duties of this class or craft were defined by the rules and regulations governing their contract of employment (T. R. 13, 15). As a part of their contract of employment they were to exercise the duties of a brakeman on the head end of passenger trains and in addition thereto carry equipment to keep the coaches and chair cars clean and neat. There was also in existence a class or craft of employees known as brakemen who were called flagmen on the passenger trains and brakemen on the freight trains. This class or craft was composed entirely of white persons and by custom, practice, usage, the by-laws and constitution of their organization or union known as the Brotherhood of Railroad Trainmen, hereinafter called Brotherhood, American citizens of color were not permitted to become members of the Brotherhood solely on account of their color (T. R. 14, 15).

The petitioners, by virtue of their employment acquired certain vested proper rights of seniority and other benefits which accrue by length of service in the employment of the carrier (T. R. 16). The petitioners received less wages than the brakemen (T. R. 16) and have continuously performed their services as an independent craft or class for the same carrier as the brakemen for more than 50 years.

In 1918 the Director General of Railroads by General Order #27, Article VI, issued an order that all colored men employed as trainmen should be paid the same rates of wages as are paid white men in the same capacities (T. R. 19). The petitioners were then and have at all times been known as trainmen.

After this order for equal pay was issued the Brotherhood filed a complaint October 1, 1925 with the Train Service Board of Adjustment for the Western Region an Administrative Agency created by agreement of the carriers and the Brotherhood under Title 3, Section 302 of the Transportation Act, 1920 (T. R. 19). The protest claimed "that under the schedule of rules the positions held by the petitioners should be filled by brakemen who held seniority on the brakemen's seniority roster" (T. R. 63). This claim was denied by Decision #2126, dated September 9, 1926. The Brotherhood then made a new agreement with the carrier in 1926 which agreement specifically exempted its application of the train porters (T. R. 24, 64). In 1927 the Brotherhood again filed a protest with the Train Service Board of Adjustment for the Western Region, containing the same claim concerning the jobs held by the petitioners. This claim was again denied February 8, 1927 by Decision #2336 (T. R. 20, 63). The Articles of Agreement between the Brotherhood and the carrier provided that the Award of the Train Service Board of Adjustment for the Western Region would be final and binding upon all parties thereto (T. R. 20, 21). Notwithstanding these two adjudications against the Brotherhood, in 1939 the claim was filed against the carrier by the Brotherhood involving the same subject matter which had been disposed of in the prior decisions (T. R. 22). This claim was filed without notice to the petitioners or an opportunity to be heard by them although they were employees involved and would suffer the loss of

their positions and jobs as a result of the Order and Award #6640 (T. R. 23, 61) which in effect required the carrier to remove the petitioners from the jobs which had been held by them for forty years and replaced them with members of the Brotherhood.

After a full hearing a temporary injunction was issued by the District Court on the ground that the Order and Award #6640 was entered without notice and an opportunity to be heard and in violation of the property rights of the petitioners in that the petitioners were denied "due process of law" in violation of the Fifth Amendment of the Federal Constitution. This injunction was affirmed by the Court of Appeals for the Seventh Circuit (*Hunter et al.* v. *Atchison, Topeka and Santa Fe Railway Company,* 171 Fed. 2d 594 in which opinion the court states, (p 596):

> "* * * The court concluded as a matter of law that the Order and Award of the Board was void because rendered without notice to the plaintiffs within the terms of the Railway Labor Act, Par. 3 First (j), 45 U. S. C. A. Par. 153 First (j), and that the enforcement of such void Award deprives plaintiffs of their property rights without due process of law. * * *"

(p. 597):

> "* * * The court below, in holding the Award void in the absence of notice to the porters, relied heavily upon the decision of this court in *Nord et al.* v. *Griffin,* 7th Cir., 86 F. 2d 481, where the question for decision was quite similar to that of the instant case. The rationale of the decision is that an interested party in the absence of notice was deprived of a constitutional right. * * *"

(p. 599):

> "* * * While we are of the view that the Award is void because the Board exceeded its authority, we place our decision primarily upon the ground that it was made without notice to the porters, as the statute requires, and that their constitutional right to a hearing was denied. * * *"

This Honorable Court denied a petition for certiorari from the above decision of the Court of Appeals, 337 U. S. 916.

The Court of Appeals for the Seventh Circuit in *Nord et al.* v. *Griffin,* 86 Fed. 2d 481, in deciding the question involved in the case at bar succinctly states the sole principle of law involved herein as follows, (p. 484):

> "The trial below and this appeal do not involve the merits of the controversy. They involve solely the question of whether the appellee is to be bound by an order of an administrative board in a proceeding to which he was not a party, entered at a hearing of which he had no notice. The mere statement of the proposition is conclusive of its unsoundness. The rights of plaintiff are protected by the Fifth Amendment."

The Court in *Nord et al.* v. *Griffin,* 86 Fed. 2d 481, in holding that the right to earn the livelihood is the property right and is protected by law from unwarranted interference states, (p. 483):

> "* * * The right to earn a livelihood and to continue in employment unmolested by efforts to enforce void enactments or adjudications is entitled to protection, in the absence of an adequate remedy at law. *Truax* v. *Raich,* 239 U. S. 33, 36 S. Ct. 7, 60 L. Ed. 131, L. R. A. 1916D, 545, Ann. Cas. 1917B, 283. Obviously the District Court was correct in concluding that the award deprived appellee of his property rights. * * *"

In concluding its decision by holding that an Award of the Railroad Adjustment Board, First Division, was void and deprived an employee of his constitutional rights under the Fifth Amendment to the United States Constitution relies upon the decision of this Honorable Court (*Nord et al.* v. *Griffin,* 86 Fed. 2d 481) and states (484):

> "* * * In *Ochoa* v. *Hernandez y Morales,* 230 U. S. 139, 33 S. Ct. 1033, 1041, 57 L. Ed. 1427, the Supreme Court said: 'Whatever else may be uncertain about

> the definition of the term "due process of law," all authorities agree that it inhibits the taking of one man's property and giving it to another, contrary to settled usages and modes of procedure, and without notice or an opportunity for a hearing. * * *' "

This being a government of law and not a government of men acting contrary to the plain provisions of the law, we will not further labor this point.

II.

The misconception or disregard of the facts and the law.

In the Appendix we have set forth the provisions of the Railway Labor Act, which we believe to be applicable to the case at bar and without repetition we shall endeavor to refer to the paragraphs of the verified complaint which we believe to be undenied and therefore, under the Federal Rules of Civil Procedure are admitted.

This Honorable Court in a recent decision full discussing the invalidity of proceedings of an administrative body, which deprived a citizen of property rights, without notice and an opportunity to be heard. *Joint Anti-Fascist Refugee Committee* v. *McGrath,* 95 L. Ed 817. This court at page 837 states:

> "* * * Only recently, this Court recognized that 'the action of an officer of the sovereign (be it holding, taking or otherwise legally affecting the plaintiff's property) can be regarded as so "illegal" as to permit a suit for specific relief against the officer as an individual * * * if it is not within the officer's statutory powers or, if within those powers, * * * if the powers, or their exercise in the particular case, are constitutionally void.' *Larson* v. *Domestic & Foreign Commerce Corp.,* 337 U. S. 682, 701, 702, 93 L. Ed. 1628, 1642, 69 S. Ct. 1457. The same is true here, where the acts complained of are beyond the officer's authority under the Executive Order. * * *"

In the case at bar the powers and their exercise in this particular case are constitutionally void. It is also apparent from the record that the powers attempted to be exercised by the National Railroad Adjustment Board are not within its statutory powers.

The verified complaint of the petitioners specifically set forth facts showing the following conditions:

(a) That no notice was given to petitioners as required by Section 3, First (j) of the Railway Labor Act. (T. R. 35, Par. 24 (a));

(b) That the National Railroad Adjustment Board, First Division, had no jurisdiction to alter, abrogate, deal with or determine in rights of the petitioners concerning rates of pay, rules, and working conditions, (Section 5, Railway Labor Act), (T. R. 36, 37, 41, Par. 24 (b), (c), (e), (j));

(c) That no thirty day notice was given to petitioners as required by Section 6, Railway Labor Act (T. R. 41, Par. 24 (k));

(d) That no effort was made to maintain agreements concerning rates of pay, rules, and working conditions before filing the complaint with the National Railroad Adjustment Board, as required by Section 2, First, Railway Labor Act.

We believe the compliance with the above Sections of the Railway Labor Act are jurisdictional and that the Order and Award, in the case at bar having been made in disregard of the plain provisions of the law, is void.

The concurring opinions in the last cited case fully sustain the proposition that the Due Process Clause of the Fifth Amendment would bar condemnation without notice and a fair hearing (Mr. Justice Black, p. 838).

Mr. Justice Frankfurter, p. 849, states:

"* * * The requirement of 'due process' is not a fair-weather or timid assurance. It must be respected in periods of calm and in times of trouble; it protects

aliens as well as citizens. * * * Representing a profound attitude of fairness between the individual and government, 'due process' is compounded of history, reason and the past course of decisions, and stout confidence in the strength of the democratic faith which we profess. Due process is not a mechanical instrument. It is not a yardstick. It is a process. It is a delicate process of adjustment inescapably involving the exercise of judgment by those whom the constitution entrusted with the unfolding of the process. * * *"

(p. 850):

"The construction placed by this court upon legislation conferring administrative powers shows consistent respect of fair procedure before men are denied or deprived of rights. From a great mass of cases running the full gamut of control over property and liberty, there emerges the principle that statutes should be interpreted if explicit language does not preclude, so as to observe due process in its basic meaning. (Citing Cases.) Fair hearings have been held essential for rate determinations *and, generally, to deprive persons of property.* An opportunity to be heard is constitutionally necessary to deport persons even though they make no claim of citizenship and is accorded to aliens seeking entry in the absence of specific directions to the contrary. * * *"

Mr. Justice Douglas in concurring in the opinion last cited at page 857 states:

"* * * Notice and opportunity to be heard are fundamental to *due process of law.* We would reverse these cases out of hand if they were suits of a civil nature to establish a claim against petitioners. Notice and opportunity to be heard are indispensable to a fair trial whether the case be criminal or civil. (Citing Cases.) * * *"

Mr. Justice Jackson in concurring with the opinion in the last cited case at p. 862 holds that, unless a hearing is provided before condemnation due process of law will be denied.

The pertinent provisions of the Railway Labor Act are set forth in the Appendix. There is no dispute that the Board, the carrier and the Brotherhood have failed to comply with the provisions of the Act. The Court of Appeals in the case at bar, *Hunter* v. *Atchison, Topeka and Santa Fe Railway Co.*, 188 Fed. 2d 294, 300 states that:

> "In spite of adverse court rulings the Adjustment Board apparently persists in the practice of giving *notice only to the proceedings.* In many cases such a notice is insufficient. We so held in the previous appeal of this case."

What can be gained by remanding this cause to the District Court? The provisions of the applicable law are plain and unambiguous. They have been continuously disregarded by the National Railroad Adjustment Board, First Division. The Order and Award #6640 has been held void, and nothing can be done to render a void order valid. It may be that if this Honorable Court by its opinion will interpret the provisions of the Railway Labor Act, the National Railroad Adjustment Board will follow the law. This is a government of law and not of men.

It is respectfully submitted that this Honorable Court, upon reconsideration of this cause will grant the writ of certiorari prayed for by the petitions.

Respectfully submitted,

RICHARD E. WESTBROOKS,
Counsel for Petitioner.

ELLIS & WESTBROOKS,
Of Counsel.

CERTIFICATE OF COUNSEL.

I hereby certify that the foregoing petition for rehearing is presented in good faith and not for delay and is restricted to grounds specified in Rule 33 of the rules of this Court.

.....

Counsel for Petitioner.

October 19, 1951.

APPENDIX.

Pertinent Paragraphs and Section of the Railway Labor Act: May 20, 1926, c. 347, Par. 1, 44 Stat. 577; June 7, 1934, c. 426, 48 Stat. 926; June 21, 1934, c. 691, Par. 1, 48 Stat. 1185; June 25, 1936, c. 804, 49 Stat. 1921; Aug. 13, 1940, c. 664, Pars. 2, 3, 54 Stat. 785, 786, involved in this case. (Ch. 8, 45 U. S. C. A.)

Par. 152, First (Section 2, Railway Labor Act). General duties—Duty of carriers and employees to settle disputes.

First. It shall be the duty of all carriers, their officers, agents, and employees to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules, and working conditions, and to settle all disputes, whether arising out of the application of such agreements or otherwise, in order to avoid any interruption to commerce or to the operation of any carrier growing out of any dispute between the carrier and the employees thereof.

Par. 153, First (j) Section 3, First (j), Railway Labor Act). National Railroad Adjustment Board—Establishment; composition; powers and duties; divisions; hearings and awards.

First. There is hereby established a Board, to be known as the "National Railroad Adjustment Board", the members of which shall be selected within thirty days after June 21, 1934, and it is hereby provided—

(j) Parties may be heard either in person, by counsel, or by other representatives, as they may respectively elect, and the several divisions of the Adjustment Board shall give due notice of all hearings to the employee or employees and the carrier or carriers involved in any disputes submitted to them.

Par. 155, First (a) and (b) (Section 5, First (a) and (b), Railway Labor Act). Functions of Mediation Board—Disputes within jurisdiction of Mediation Board.

First. The parties, or either party, to a dispute between an employee or group of employees and a carrier may invoke the services of the Mediation Board in any of the following cases:

(a) A dispute concerning changes in rates of pay, rules, or working conditions not adjusted by the parties in conference.

(b) Any other dispute not referable to the National Railroad Adjustment Board and not adjusted in conference between the parties or where conferences are refused.

Par. 156, (Section 6, Railway Labor Act). Procedure in changing rates of pay, rules, and working conditions.

Carriers and representatives of the employees shall give at least thirty days' written notice of an intended change in agreements affecting rates of pay, rules, or working conditions, and the time and place for the beginning of conference between the representatives of the parties interested in such intended changes shall be agreed upon within ten days after the receipt of said notice, and said time shall be within thirty days provided in the notice. In every case where such notice of intended change has been given, or conferences are being held with reference thereto, or the services of the Mediation Board have been requested by either party, or said Board has proffered its services, rates of pay, rules, or working conditions shall not be altered by the carrier until the controversy has been finally acted upon, as required by section 155 of this title, by the Mediation Board, unless a period of ten days has elapsed after termination of conferences without request for or proffer of the services of the Mediation Board. May 20, 1926, c. 347, Par. 6, 44 Stat. 582; June 21, 1934, c. 691, Par. 6, 48 Stat. 1197.

FILED
OCT 29 1951
CHARLES ELMORE CROPLEY

IN THE

Supreme Court of the United States

OCTOBER TERM, 1951.

No. 99

OBIE FAUSTER HUNTER, ET AL.,
Petitioners,

vs.

C. D. SHEPHERD, ET AL.,
Respondents.

ANSWER OF C. D. SHEPHERD, ET AL., DEFENDANTS-RESPONDENTS, IN OPPOSITION TO PETITION FOR REHEARING ON DENIAL OF WRIT OF CERTIORARI.

BURKE WILLIAMSON,
JACK A. WILLIAMSON,
39 South LaSalle Street,
Chicago 3, Illinois,
Attorneys for Defendants-Respondents.

ROBERT MCCORMICK ADAMS,
39 South LaSalle Street,
Chicago 3, Illinois,
Of Counsel.

October 26, 1951.

THE GUNTHORP-WARREN PRINTING COMPANY, 310 WEST JACKSON, CHICAGO 56

IN THE

Supreme Court of the United States

OCTOBER TERM, 1951.

No. 99.

OBIE FAUSTER HUNTER, ET AL.,
Petitioners,

vs.

C. D. SHEPHERD, ET AL.,
Respondents.

ANSWER OF C. D. SHEPHERD, ET AL., DEFENDANTS-RESPONDENTS, IN OPPOSITION TO PETITION FOR REHEARING ON DENIAL OF WRIT OF CERTIORARI.

To the Honorable Fred A. Vinson, Chief Justice of the United States, and the Associate Justices of the Supreme Court of the United States:

Now come the Defendants-Respondents, C. D. Shepherd, *et al.*, in answer to the petition of Obie Fauster Hunter, *et al.*, for a rehearing of this Court's order denying the petition for certiorari herein, and respectfully represent as follows:

1. This case is now at an interlocutory stage in that the decision sought to be reviewed remands the case to the District Court for trial on the merits and directs the reinstatement of a preliminary injunction in petitioners' favor.

2. The petition for rehearing contains no suggestion

that circumstances of substantial or controlling effect have intervened since petitioners' application for certiorari was made herein.

3. The petition for rehearing does not disclose other substantial grounds for the granting of certiorari which were not previously presented. On the contrary, the petition clearly states, at pages 1 and 2, that it is filed in the belief that this Court overlooked the importance of the questions as presented in the original petition for certiorari. The arguments advanced in the petition for rehearing are essentially a restatement of those previously urged, and these respondents, having heretofore filed a brief in opposition to the original petition, consider it unnecessary to answer such arguments again.

WHEREFORE, these respondents respectfully pray that the petition for rehearing be denied.

BURKE WILLIAMSON,

JACK A. WILLIAMSON,
39 South LaSalle Street,
Chicago 3, Illinois,
Attorneys for Defendants-Respondents, C. D. Shepherd, et al.

ROBERT MCCORMICK ADAMS,
39 South LaSalle Street,
Chicago 3, Illinois,
Of Counsel.

October 26, 1951.